

REMARKS

Reconsideration and allowance in view of the foregoing amendments and the following remarks are respectfully requested.

Claims 17-30 remain will be pending in the present application. Claims 1-16 were cancelled in a previous Amendment.

Claims 27-29 stand rejected under 35 U.S.C. § 102 as being anticipated by U.S. Patent No. 5,551,419 to Froehlich et al. ("the '419 patent"). Applicant respectfully traverses this rejection for the reasons presented below.

Independent claim 27 has been amended to clarify that the apparatus includes a patient interface connected to the second end of the patient circuit and an exhaust valve coupled to the patient interface. The exhaust valve is recited as being coupled to the patient interface so as to communicate an interior of the patient interface to ambient atmosphere through at least a portion of the patient interface. An example of such an exhaust valve provided, for example, on the shell of a patient interface is shown in FIG. 6 of the present application. Claim 27 also recites that the exhaust valve operates under control of the controlling means so as to control a pressure of the flow of gas in the patient interface. Applicant submits that the '419 patent does not teach or suggest an apparatus having these features.

The '419 patent teaches providing an exhaust valve 13 downstream of blower 12. However, exhaust valve 13 is not provided on mask 11. Therefore, it does not communicate the interior of the patient interface to the ambient atmosphere through at least a portion of the patient interface. Moreover, it would not be obvious to move exhaust valve 13 to mask 11 in the '419 patent because there is no suggestion to do so, and doing may require including features, such as wiring between the controller and the mask, that those skilled in the art may find undesirable.

For the reasons presented above, applicant respectfully submits that independent claim 27 is not anticipated or rendered obvious by the cited references. In addition, claims 28 and 29 are also not anticipated or rendered obvious due to their dependency from independent

claim 27. Accordingly, applicant respectfully requests that the above rejection of claims 27-29 be withdrawn.

Claims 17-28 and 30 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-13 of U.S. Patent No. 6,705,314 to O'Dea ("the '314 patent"). As suggested by the Examiner, a Terminal Disclaimer executed by the undersigned applicant's representative in compliance with 37 C.F.R. § 1.321(c) is submitted herewith to disclaim the term of a patent resulting from the present application from extending beyond that of the '314 patent. Accordingly, applicants respectfully requests that the above obviousness-type double patent rejection be withdrawn.

The Commission is authorized to charge the Terminal Disclaimer fee required under 37 C.F.R. § 1.20(d) to deposit account no. 50-0558. Two copies of a Fee Transmittal form are submitted for this purpose.

This response is being filed within the three-month statutory response period which expires on January 16, 2007. In addition, no additional claim fees are believed to be required as a result of the above amendments to the claims. Nevertheless, the Commission is authorized to charge any fee required under 37 C.F.R. §§ 1.16 or 1.17 to deposit account no. 50-0558.

All objections and rejections have been addressed. It is respectfully submitted that the present application is in condition for allowance and a Notice to the effect is earnestly solicited.

Respectfully submitted,

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Note: The Commission is authorized to charge any fee required under 37 C.F.R. §§ 1.16 or 1.17 to deposit account no. 50-0558.